IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8276 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKUNTALABEN P MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR DC RAVAL for MR ANAND for Petitioner

MS KT DAVE, for Respondent No. 1

NOTICE SERVED for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 19/04/2001

ORAL JUDGEMENT

The petitioner is an employee of Respondent No.3, Panchayat, working as District Extension Educator, Class-III post. It is the say of the petitioner that she

is entitled to be promoted as a District Education and Information Officer, a Class-II post in the State cadre, and that she has been denied seniority in her present cadre in direct violation of the Service Rules which grants seniority from the date of entry in service.

2. The petitioner admittedly joined service on 06/5/1961 as a Mukhya Sevika and the appointment was made by Respondent No.1 i.e. Gujarat state, as at the relevant time Panchayat service did not exist; that with effect from 15/11/1966, the post of Mukhya Sevika was abolished and the petitioner alongwith other similar situated persons was absorbed in the cadre of Block Extension Educator with effect from 15/11/1966. As per Government resolution dated 09/12/1966, special reference to Clause 3, such Mukhya Sevikas who are absorbed as Block Extension Educators were entitled to all benefits of service including seniority on the basis of continuous service from the date of appointment. Since 19/10/1997, the petitioner has been promoted to the post of District Extension Educator and since then the petitioner has been holding the said post without any further promotion, because according to the petitioner, her seniority has not been fixed correctly.

3. The petitioner made a representation on 07/05/1986 and followed up the said representation by another representation dated 08/08/1988. However, there has been no response from the authorities. The petitioner has claimed the following reliefs :

"(A) To treat the Seniority lists at Annexures B and E in as much as they show the petitioner at Sr.No.193-A and 175 respectively, and do not show her at above Sr.No.7 as illegal, unconstitutional, vitiated by malafides, null, void and of no effect whatsoever.

(B) To fix the petitioner's seniority above Sr.No.7 on the basis of the date of entry into service as Mukhya Sevika, in the combined seniority list of the joint cadres.

(C) To consider the petitioner's case for promotion to the higher post of District Education and Information Officer on the basis that the petitioner was above Sr.No.7 in the seniority lists at Annexures B and E, i.e. on the basis of date of entry into service as Mukhya Sevika.

(D) To consider the petitioner's case for promotion

on the post of DEIO on the basis of promotion of her immediate junior as per the correct seniority as prayed hereinabove, and give the petitioner the benefit of deemed date of promotion and all the consequential benefits of promotion to the higher posts on that basis.

(E) To grant any other appropriate relief/remedy deem just and proper by Your Lordships in the facts and circumstances of the case, including the costs of this petition."

4. On 03/02/1989 this Court (Coram : R.J.Shah, J) passed the following order :

"Mr.Joshi appears for respondent No.2 and prays for time. In the circumstances S.O.to 13.2.89. Interim relief to the effect that one post of District Education and Information Officer to be kept vacant till 15.2.1989."

5. On 14/3/1989, this Court (Coram : M.B.Shah, J) (as he then was) passed the following order :

"In spite of service of notice to the respondents, no affidavit in reply is filed. Mr. Joshi,learned advocate appearing on behalf of the respondents, states that the respondents are informed to instruct him as to why the petitioner is not given similar benefit of seniority but yet he has not received any reply. In this view of the matter, ad interim relief to continue till further orders. S.O.to 27-3-1989.

6. Thereafter on 27/3/1989, Rule was issued and ad-interim relief was ordered to be continued till further order.

7. There is no affidavit-in-reply filed on behalf of any of the respondents. However, at Annexure 'F' an order dated 31st August, 1982 states that in light of order of this Court in Special Civil Application No.2365 of 1981 Smt.J.D.Rathod who was in the seniority list at Sr. No.193 is to be placed at Sr.No.17-A in the seniority list and her service is stated to be effective as per column No.5 with effect from 26/03/1963 instead of 1/5/1968.

8. Having taken into consideration the aforesaid facts and circumstances, the Secretary, Health and Family Welfare Department, State of Gujarat is hereby directed to take into consideration the representations dated 07/5/1986 and 08/08/1988 alongwith order of this Court in Special Civil Application 2365 of 1981, whereby similarly situated persons have already been granted identical relief. The representations shall be disposed of within a period of four weeks from the date of receipt of the writ of this Court or certified copy of this order, which ever is earlier, after giving full and proper opportunity to the petitioner to represent.

9. In view of the order of this Court which is operating from 3rd February, 1989, the interim relief which is in operation till date shall continue to operate till the decision is taken on the representation.

10. The petition is disposed of accordingly and rule is made absolute to the aforesaid extent with no order as to costs.

(D.A.Mehta, J)
'Bhavesh'